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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/203,672	02/28/1994	BRIAN H. SILVER	5297/32	1958
7590 05/16/2005 BANIAK PINE & GANNON 150 N. WACKER DRIVE SUITE 1200 CHICAGO, IL 60606			EXAMINER TRINH, HOA B	
			ART UNIT 2814	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 08/203,672
Filing Date: February 28, 1994
Appellant(s): SILVER ET AL.

Mr. Michael H. Baniak
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 16 2005
GROUP 2800

This is in response to the appeal brief filed June 24, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on June 24, 2003, has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 20-26 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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(8) Claims Appealed

Claims 20-26 contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claims 20-26 correctly written in the Appendix to the Examiner's Answer.

(9) Prior Art of Record

3905477	Graham	9-1975
4600104	Yanase	7-1986

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20-23 are rejected under 35 U.S.C. 102 (b) as being anticipated by Graham. This rejection is set forth in a prior Office Action, mailed on September 25, 2002.

Claims 25-26 are rejected under 35 U.S.C. 102 (b) as being anticipated by Yanase. This rejection is set forth in a prior Office Action, mailed on September 25, 2002.

Claims 20-24 are rejected under 35 U.S.C. 103 (a) as being anticipated by Yanase in view of Graham. This rejection is set forth in a prior Office Action, mailed on September 25, 2002.

(11) Response to Argument

In the arguments, applicant contends that Graham does not disclose every element of the present invention in which claim 20 asserts. In particular, applicant argues in page 8, lines 10-11, that in part "The enclosure is permanently sealed except at one portion which includes a releasably sealed seam bag access.". The examiner notes that the limitation, "The enclosure is permanently sealed except at one portion which includes a releasably sealed seam bag access.", is a new issue which applicant has inserted in an Amendment Not Enter after the Final Office

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Action. Thus, applicant's argument with respect to said limitation, "The enclosure is permanently sealed except at one portion which includes a releasably sealed seam bag access.", is moot.

Accordingly, Claims 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Graham ((3,905,477). In claim 20, Graham (3,905,477) discloses a disposable bag 11 (fig. 1) which is permanently sealed except at one portion at the top end closure 25 thereof. The portion comprises a bag access 29 adapted to substantially seal the bag in a first position thereof by a plug or clamp means but also adapted to selectively allow in a second position thereof the liquid to be introduced in the chamber/enclosure 27 having a front side 13 and a back side 15, a seal 19 to seal the front 13 and the back side 15 together, and a section or a writing area 23, wherein the writing area 23 forms integral with the bag 11 by the seal 9 and isolates or remotes from a liquid containing portion or enclosure 27. (See figure 1 and column 3, lines 16-43.). The examiner notes that breast milk is a type of liquid or fluid which may be considered as viable and perishable material similar to the blood. Thus, it is equally important to store or maintain either the breast milk or blood in a bag that is capable of keeping it sterile or bacteria free.

As to claims 21-22, the section 23 comprises at least Grit area indicating thereon a date of filing the enclosure 27. The writing area or section 23 may also be in-herently used for information such as the "volume" of the content inside of the bag. (See figure 1.) As to claim 23, the bag is made from a plastic tube permanently closed at a lower end thereof by a lower seal 19 thereby delimiting a bottom end of the enclosure 27, the section 23 extending from the lower seal 19 away from the enclosure 27. See figure 1 and column 3, lines 16-43.

As to claims 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yanase

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(4,600, 104). In claim 25, a method of substantially sterilely handling breast milk, comprising the steps of a) providing a closed disposable sterile bag 1 (fig. 1) comprising a tear off- strip 9 and providing a bag holder which is a breast pump (unlabeled); b) removing said tear off strip to reveal a milk receiving chamber (unlabeled) of said bag 1 ; and c) mounting said bag 1 to said bag holder/breast pump (unlabelled); wherein milk is introduced in said chamber between said steps b) and c) or after step c). (See Yanase '104, column 3, lines 4-33.). As to claim 26, a method as defined in claim 25, wherein step after step b), said bag 1 is attached to a breast pumping device (unlabeled) such that breast milk retrieved by said pumping device is directly delivered through into said bag 1. (See Yanase t 104, column 3, lines 4-33.)

With respect to claims 20-24 are rejected under 35 U.S.C. 103 (a) as being anticipated over Yanase in view of Graham. Yanase (4634006) discloses the invention substantially as claimed. Yanase discloses a disposable bag 1 (fig. 1, col. 1, lines 40-42) for containing breast milk. The bag 1 is hermetically (col. 1, lines 55-59) sealed except at one portion 9 which comprises a bag access (col. 1, lines 53-55) adapted to substantially seal the bag in a first position by also adapted to selectively allow in a second position thereof the breast milk to be introduced in the chamber when it is desired to be used, whereby once in the second position the breast milk can be received in the bag. (See figure 1, the abstract, column 1, line 42, column 3, lines 4-69, and column 4, line 1.) However, Yanase does not explicitly teach a section locates remote from the enclosure and adapted for receiving thereon information about the content of the bag 1. Graham (3,905,477) discloses a bag 11 having a seal 19, a front side 13 and a back side 15, liquid filling compartment of the enclosure/chamber 27, and a writing area 23, wherein the writing area 23 forms integral with the bag 11 by the seal 9 joining the front and

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back inboard of the bag perimeter in facial engagement to define the writing area 23. The writing area 23 is isolated or being remote from a liquid filling/containing portion 27. (See figure 1 and column 3, lines 16-43.) Yanase and Graham are analogous art, because they are in the same field of endeavors. Therefore, with respect to claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the writing area in Yanase with the writing area, as taught by Graham, for identifying the content inside the bag.

As to claims 21-22, the combined teaching of Yanase in view of Graham includes the section 23 comprising at least first area indicating thereon a date of filling the enclosure 27. The writing area or section 23 may also be used to include the information such as the "volume" of the content of the bag. (See Graham's figure 1.)


As to claim 23, the combined teaching of Yanase in view of Graham includes the bag being made from a plastic tube permanently closed at a lower end thereof by a lower seal 19 thereby delimiting a bottom end of the enclosure 27, the section 23 extending from the lower seal 19 away from the enclosure 27. (See Graham's figure 1 and column 3, lines 16-43.)

As to claim 24, the combined teaching of Yanase in view of Graham includes the bag in combination with a bag holder 34, 36, said bag holder 34, 36 comprising a hollow body 30 and a cap 34 provided with a nipple 33 and being adapted for feeding a baby, said bag holder being adapted for receiving therein said bag. (See Yanase '104, column 3, lines 4-33, which incorporated Yanase (3,977,405) entirety - figure 8.)

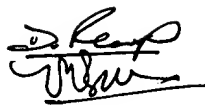
For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Vikki Trinh 
May 11, 2005

Conferees
Primary Examiner David Reip
Primary Examiner Vy Bui



MAY 12, 2005

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